

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 03-0212P
FOOD AND BEVERAG TAX
For Years 1999, 2000, 2001 and 2002**

NOTICE: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Tax Administration - Interest

Authority: IC 6-8.1-10.1

Taxpayer requests waiver of the interest imposed.

II. Tax Administration - Penalty

Authority: IC 6-8.1- 10-2.1(d); 45 IAC 15-11-2(c).

Taxpayer requests waiver of the 10% negligence penalty imposed for failure to use ordinary business care.

STATEMENT OF FACTS

Taxpayer is protesting the imposition of the interest and 10% negligence penalty imposed because it was the victim of employee theft and because it is experiencing difficult financial times that may preclude it from being capable of paying the accrued penalties and interest.

I. Tax Administration - Interest

DISCUSSION

Pursuant to IC 6-8.1-10.1, the department has no authority to waive interest.

FINDINGS

The taxpayer is respectfully denied.

II. Tax Administration – Penalty

DISCUSSION

IC 6-8.1-10-2.1(d) provides:

If a person subject to penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit the tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty.

Furthermore, in order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. 45 IAC 15-11-2(c). Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case. Employee theft of the magnitude in this situation, absent any civil or criminal liability against the perpetrators, does not show reasonable care and therefore does not relieve a taxpayer of its duty to collect and remit taxes as they become due.

FINDINGS

The taxpayer is respectfully denied.